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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT SEATTLE

8 ANTONIO R.,

9 Plaintiff,

10 v.

11 COMMISSIONER OF SOCIAL SECURITY,

12 Defendant.

Case No. C18-1232 RSM

**ORDER AFFIRMING THE  
COMMISSIONER'S DECISION  
AND DISMISSING THE CASE  
WITH PREJUDICE**

13 Plaintiff seeks review of the denial of his applications for Supplemental Security Income  
14 and Disability Insurance Benefits. Plaintiff contends the ALJ erred by relying on a  
15 nonexamining medical expert's testimony to assess his residual functional capacity. Dkt. 14. As  
16 discussed below, the Court **AFFIRMS** the Commissioner's final decision and **DISMISSES** the  
17 case with prejudice.

18 **BACKGROUND**

19 Plaintiff is currently 54 years old, has a limited education, and has worked as a press  
20 operator, warehouse worker, furniture assembler, and assembler. Dkt. 9, Administrative Record  
21 (AR) 52-53, 25-26. Plaintiff applied for benefits in March 2014, alleging disability as of  
22 September 28, 2013. AR 188. Plaintiff's applications were denied initially and on  
23

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1 reconsideration. AR 186, 187, 212, 213. After the ALJ conducted a hearing in February 2017,  
2 the ALJ issued a decision finding Plaintiff not disabled. AR 33, 13-26.

### 3 THE ALJ'S DECISION

4 Utilizing the five-step disability evaluation process,<sup>1</sup> the ALJ found:

5 **Step one:** Plaintiff has not engaged in substantial gainful activity since the September  
6 2013 alleged onset date.

7 **Step two:** Plaintiff has the following severe impairment: lumbar spine condition.

8 **Step three:** These impairments do not meet or equal the requirements of a listed  
9 impairment.<sup>2</sup>

10 **Residual Functional Capacity:** Plaintiff can perform medium work. He can carry 50  
11 pounds occasionally, 20 pounds frequently, and 10 pounds continuously. He can sit,  
12 stand, and walk for two hours at a time and eight hours total per day. He can frequently  
13 climb and stoop, occasionally crawl, and continuously balance, kneel, and crouch. He  
14 must avoid concentrated exposure to hazards.

15 **Step four:** Plaintiff can perform all past relevant work and is thus not disabled.

16 **Step five:** The ALJ did not reach step five.

17 AR 16-26. The Appeals Council denied Plaintiff's request for review, making the ALJ's  
18 decision the Commissioner's final decision. AR 1.<sup>3</sup>

### 19 DISCUSSION

20 This Court may set aside the Commissioner's denial of Social Security benefits only if  
21 the ALJ's decision is based on legal error or not supported by substantial evidence in the record  
22 as a whole. *Trevizo v. Berryhill*, 871 F.3d 664, 674 (9th Cir. 2017). Each of an ALJ's findings  
23 must be supported by substantial evidence. *Reddick v. Chater*, 157 F.3d 715, 721 (9th Cir.

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24 <sup>1</sup> 20 C.F.R. §§ 404.1520, 416.920.

25 <sup>2</sup> 20 C.F.R. Part 404, Subpart P, Appendix 1.

26 <sup>3</sup> The rest of the procedural history is not relevant to the outcome of the case and is thus omitted.

1 1998). “Substantial evidence” is more than a scintilla, less than a preponderance, and is such  
2 relevant evidence as a reasonable mind might accept as adequate to support a conclusion.  
3 *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th  
4 Cir. 1989). The ALJ is responsible for determining credibility, resolving conflicts in medical  
5 testimony, and resolving any other ambiguities that might exist. *Andrews v. Shalala*, 53 F.3d  
6 1035, 1039 (9th Cir. 1995). While the Court is required to examine the record as a whole, it may  
7 neither reweigh the evidence nor substitute its judgment for that of the Commissioner. *Thomas*  
8 *v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When the evidence is susceptible to more than  
9 one interpretation, the Commissioner’s interpretation must be upheld if rational. *Burch v.*  
10 *Barnhart*, 400 F.3d 676, 680-81 (9th Cir. 2005).

11 Nonexamining orthopedic surgeon John F. Kwock, M.D., reviewed the entire medical file  
12 associated with Plaintiff’s disability applications and testified at the February 2017 hearing that  
13 Plaintiff was capable of medium work. AR 38-39. Plaintiff contends the ALJ erred by relying  
14 on Dr. Kwock’s opinion and, because the ALJ discounted all other medical opinions, Plaintiff  
15 argues the ALJ had no medical basis for determining Plaintiff’s RFC. Dkt. 14. Plaintiff does not  
16 challenge the ALJ’s rejection of other medical opinions.

17 To begin with, an ALJ is not required to provide reasons in support of *accepting* a  
18 medical opinion. *See Turner v. Comm’r of Soc. Sec. Admin.*, 613 F.3d 1217, 1223 (9th Cir.  
19 2010) (“the ALJ did not need to provide ‘clear and convincing reasons’ for rejecting [a treating  
20 doctor’s] report because the ALJ did not reject any of [his] conclusions”). Here, the ALJ did  
21 provide reasons, giving Dr. Kwock’s opinions “great weight” because his opinions were  
22 consistent with the longitudinal treatment record, he was the only medical expert to review the  
23 entire record, he supported his opinions with reference to imaging and other clinical

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1 observations, and his specialty of orthopedics was most relevant to Plaintiff's lumbar spine  
2 impairment. AR 23. Plaintiff disputes the findings that Dr. Kwock's opinions were supported  
3 by the record. "The weight afforded a non-examining physician's testimony depends on the  
4 degree to which he provides supporting explanations for his opinions." *Garrison v. Colvin*, 759  
5 F.3d 995, 1012 (9th Cir. 2014) (internal alterations omitted).

6 Plaintiff argues that Dr. Kwock stated that he "does not trust physical exams or radiologic  
7 studies" and thus has no medical evidence on which to base his opinions. Dkt. 14 at 5. This  
8 mischaracterizes Dr. Kwock's testimony. He stated that radiological (imaging) studies are of  
9 "good reliability" while physical examinations are only of "moderate reliability." AR 44.  
10 However, imaging cannot directly show function. AR 44. Nevertheless, "the crux of the matter  
11 is, [for] these types of radiological findings, what would you typically expect, say, a typical  
12 patient would examine like?" AR 46. In other words, by looking at Plaintiff's imaging studies  
13 and knowing the functional capacity of people with similar imaging results, Dr. Kwock can infer  
14 Plaintiff's functional capacity. Dr. Kwock expressly referenced "three MRIs and two X-rays" of  
15 the lumbar spine on which he relied. AR 40-41. While he acknowledged that the imaging  
16 showed "mild and low-grade" degenerative changes, he stated that the findings probably would  
17 be similar for most people in their 50s and were "not extraordinary type changes for somebody  
18 that is in their 50s." AR 41-42. Dr. Kwock also referenced five physical examinations that he  
19 "thought were sufficiently complete and focused to utilize for the purpose of a neurological  
20 assessment." AR 43. He concluded that in all five, "there were no findings that would be  
21 consistent with" more severe limitations than he opined. AR 43-44.

22 Plaintiff reviews the physical examinations and argues that they do not support Dr.  
23 Kwock's assessment that Plaintiff could perform medium work. Dkt. 14 at 5-7. Plaintiff's  
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1 argument misses the point. Dr. Kwock did not rely on the physical examinations; he found  
2 imaging studies more probative. And while there are physical findings that support Plaintiff's  
3 claims, nothing that Plaintiff points to in the physical examinations actually contradicts Dr.  
4 Kwock's opinions. It is the ALJ's role to weigh the evidence, and this Court will not substitute  
5 its judgment for the ALJ's. *See Thomas*, 278 F.3d at 954; *Burch*, 400 F.3d at 680-81 (ALJ's  
6 interpretation of the evidence must be upheld if rational).

7 Plaintiff next argues that the record contains "positive exam findings" but does not  
8 explain what is positive or how it would undermine Dr. Kwock's opinions. Dkt. 14 at 7. The  
9 Court will not, and indeed cannot, address such a skimpy argument. *See Carmickle v. Comm'r,*  
10 *Soc. Sec. Admin.*, 533 F.3d 1155, 1161 n.2 (9th Cir. 2008) (declining to address issues not argued  
11 with specificity in briefing).

12 Finally, Plaintiff argues that "[t]he basis for a medium level RFC is far too tenuous" and  
13 thus the case must be remanded for further proceedings and additional evidence. Dkt. 14 at 8-9.  
14 This turns the evidentiary burden in the statutory scheme on its head. A claimant bears the  
15 burden to provide proof that she is disabled. 20 C.F.R. §§ 404.1512(a), 416.912(a); *see also*  
16 *Mayes v. Massanari*, 276 F.3d 453, 459–60 (9th Cir. 2001) ("An ALJ's duty to develop the  
17 record further is triggered only when there is ambiguous evidence or when the record is  
18 inadequate to allow for proper evaluation of the evidence."). Here, Dr. Kwock reviewed the  
19 entire medical record, including multiple imaging studies, and found it did not support greater  
20 limitations than to medium work. In addition, the ALJ identified consistently normal clinical  
21 findings. "Providers found [Plaintiff] had normal gait and posture and negative straight leg raise  
22 tests. Providers noted few, if any, range of motion limitations, and indicated no neurological  
23 deficits, loss of sensation or reflexes, or muscle weakness or atrophy." AR 23 (internal citations

1 omitted). Substantial evidence supports the ALJ's findings. *See, e.g.*, AR 604 (normal  
2 neurological findings of gait, reflexes, sensation, and strength), 625 (intact motor and sensation  
3 in arms and legs), 820 (full leg range of motion). Plaintiff argues that the ALJ cannot interpret  
4 medical records.<sup>4</sup> Dkt. 16 at 2. An ALJ is not qualified to interpret “raw medical data in  
5 functional terms.” *Vaughn v. Berryhill*, 242 F. Supp. 3d 998, 1008-09 (E.D. Cal. 2017) (quoting  
6 *Nguyen v. Chater*, 172 F.3d 31, 35 (1st Cir. 1999)). But an ALJ is permitted, indeed,  
7 affirmatively obligated, to review the medical evidence in order to adjudicate disability claims.  
8 *See* 20 C.F.R. §§ 404.1520(a)(3) (ALJ “will consider all evidence in your case  
9 record”), 404.1513(a) (evidence includes objective medical evidence, medical opinions, and  
10 other medical evidence); §§ 416.920(a)(3), 416.913(a) (same). Here, the ALJ did not interpret  
11 raw medical data; rather, she noted the providers’ interpretation of the data as normal. This is  
12 well within an ALJ’s province. The predominantly normal clinical findings indicate that  
13 Plaintiff has not met his burden to show he is disabled. On this record, the Court concludes the  
14 ALJ did not err by accepting Dr. Kwock’s opinions and basing the RFC determination on them.

## 15 CONCLUSION

16 For the foregoing reasons, the Commissioner’s final decision is **AFFIRMED** and this  
17 case is **DISMISSED** with prejudice.

18 DATED this 2 day of April 2019.

19 

20 RICARDO S. MARTINEZ  
21 CHIEF UNITED STATES DISTRICT JUDGE

22 <sup>4</sup> The case Plaintiff cites for this proposition is not on point, as the ALJ there improperly filled in  
23 gaps in the medical evidence. *See Cortez v. Colvin*, 1:15-cv-102, 2016 WL 3541450 at \*5-6  
(E.D. Cal. June 24, 2016) (“there is an absence in the record” concerning how medication  
affected claimant’s mental impairments).